STATE OF SOUTH CAROLINA

BEFORE THE PUBLIC SERVICE COMMISSION

DOCKET NO. 2017-2-E

IN RE: **Annual Review of Base Rates for Fuel Costs for South Carolina Electric & Gas Company**	)))))))))	**CCL AND SACE'S RESPONSE TO SCE&G'S REQUEST FOR A WAIVER OF COMMISSION ORDER 2017-246**

The South Carolina Coastal Conservation League and the Southern Alliance for Clean Energy, intervenors in the above-referenced docket, write to express our opposition to SCE&G's request for a waiver of its obligation to file a six-month update to PR-2 in this docket.

I. SCE&G insisted on six-month updates and should abide by the Commission Order granting that request.

In last year's fuel cost docket, Docket No. 2017-2-E, the Commission granted SCE&G's request to update rates every six months, finding that "this process reflects a reasonable and appropriate balance between the need to update rates to reflect updated information in the Company's future capacity needs while also providing rate stability and continuity." Order No. 2017-246 at 22 (April 27, 2017).

In approving SCE&G's six-month-update proposal, the Commission explicitly spoke to the possibility of a "significant event" that would warrant updates even more frequently than twice a year. Order No. 2017-246 at 22; *see also* Order at 25 (finding that SCE&G's "proposal to update its proposed PR-2 Rate Schedule twice a year <u>*or more often as may be necessary*</u> is reasonable and consistent with Commission Order No. 2016-297") (emphasis added). It is difficult to imagine an event that could have a more significant impact on SCE&G's energy landscape than last summer's cancellation of the V.C. Summer project. With the abandonment decision, SCE&G walked away from 1,340 MW of anticipated generation.

SCE&G can't have it both ways – they insisted on the importance of timely, accurate rates, especially in the wake of significant changes, but now attempt to skirt the obligation that this Commission has placed on them at their own request. Order No. 2017-246 at 22; *see also* Order at 25 ("Witness Lynch stated that SCE&G believes it is critical to keep the PR-2 rate up to date with current information and therefore it must be updated at least twice a year and perhaps more frequently if conditions warrant"). Its request for a waiver should be denied.

In its request for a waiver, SCE&G states that it is "in the process of evaluating its resource plan going forward." Waiver Request at 1. Uncertainty in resource planning is a poor excuse for delaying rate updates. Uncertainty can always be asserted given the frequent market and regulatory changes in the utility sector and is not a valid basis for a rule waiver. Furthermore, failing to update the rate now simply prolongs the use of a rate that is on its face inaccurate, due to the fact that it assumes that V.C. Summer Units 2 & 3 will come online in 2020 and 2021, respectively.

Even after SCE&G reveals its preferred resource plan, uncertainty will continue around whether the Company will declare bankruptcy or be acquired by another utility in the next year. This uncertainty is nothing new. In fact, this project was frequently cited in past fuel cost proceedings due to the impact of assumptions regarding its completion date on avoided cost rates for Qualified Facilities ("QFs"). Our groups warned of the harm caused to QFs as a result of the Company's treatment of V.C. Summer as "unavoidable capacity," and pointed to the unrealistic completion dates being put forward. Those warnings went unheeded. *See, e.g.*, Rebuttal

Testimony of Joseph M. Lynch, Docket No. 2017-2-E at 28 (dismissing QFs' ability to meet SCE&G's capacity need in the event of a construction delay because "[i]f the nuclear units are delayed, the delay likely will be only for a relatively short period").

One thing is certain: SCE&G now has a capacity need, and QFs are ready to meet that need, and should be fairly compensated for doing so. If the Company is allowed to continue acting as if this capacity need does not exist simply because it doesn't know what its preferred replacement is yet, that harm will be compounded. PURPA's regulations expressly require utilities to purchase "any energy and capacity which is made available from a qualifying facility."[1] FERC has interpreted this provision "to impose on electric utilities an obligation to purchase all electric energy and capacity made available from qualifying facilities with which the electric utility is directly or indirectly interconnected." Order No. 69, *Small Power Production and Cogeneration Facilities; Regulations Implementing Section 210 of the Public Utility Regulatory Policies Act of 1978*, 45 FR 12214-02, 12219 (1980); *Greensboro Lumber Co. v. F.E.R.C.*, 825 F.2d 518, 522 (D.C. Cir. 1987). FERC has stated that any limitation on a utility's requirement to offer payments for capacity must bear a "clear relationship to [the utility's] actual demand for capacity." *Hydrodynamics Inc.*, 146 FERC ¶ 61193, 61846 (Mar. 20, 2014). SCE&G's request for waiver undermines this Commission's requirement to provide updated avoided energy and capacity rates, and it undermines PURPA and FERC's regulations.

As explained by witness Vitolo last year, ratepayers benefit when avoided cost rates meet PURPA's requirement that they accurately reflect avoidable energy and capacity costs. There is no secret that the capacity portion of this value tends to increase when there is a capacity need – such as what SCE&G faces now in the wake of the V.C. Summer cancellation. Changes in resource decisions have a significant impact on the rates offered to qualifying facilities, and

[1] 18 C.F.R. § 292.303(a).

therefore on QFs' ability to attract financing. Between 2016 and 2017, SCE&G decreased its avoided capacity costs by approximately 70 percent, because it deemed its capacity purchases in 2018 and 2019 to be no longer avoidable. But instead of setting rates that would give QFs fair value for meeting that capacity need, SCE&G is attempting to delay filing updated rates until it is able to "solve" for this capacity itself – through its own preferred resource option. This kind of rigged system, in which QFs are never given capacity value due to the utility's ability to "plan away" their capacity need before that need is reflected in avoided cost rates, goes against the purpose of PURPA to promote a diversity of energy resources, drive competition and encourage clean energy investments by non-utility companies. Granting a waiver would be a disservice to the ratepayers of South Carolina, who have already suffered greatly under the weight of SCE&G's "preferred generation plan."

II. SCE&G insisted on a particular methodology and should not be able to change that methodology the first time it updates its rates.

In its waiver request, SCE&G forecasts that it is planning significant changes to its methodology – changes that appear to go against PURPA. If used to calculate avoided costs for Distributed Energy Resources ("DER") as well, the methodology also may violate the settlement reached by various parties after the passage of Act 236. *See* Settlement Agreement Attachment A (defining avoided capacity as the increase or reduction in fixed costs to the utility "of building and maintaining new conventional generation resources associated with the adoption of NEM"). The course of action that SCE&G now proposes is that, at the Company's first obligation to apply the Commission-approved avoided cost methodology, no update will occur. Then, in the next filing SCE&G will ask the Commission to consider an entirely new methodology. Changing not only the rates, but also the methodology, with each filing, serves neither judicial economy nor the legitimate expectations of parties and markets. Unpredictability was one reason we advocated for SCE&G to use a less-complicated, more transparent methodology for calculating avoided capacity costs (we advocated for the peaker method, which can be applied and verified independent of fluctuations in SCE&G's Integrated Resource Plan ("IRP")). SCE&G's proposed changes have not been vetted by the Commission, are a departure from the methodology established in prior dockets, and should in no way bear on the Company's obligation to update rates at this time.

SCE&G should be required to file its six-month update within the next two weeks, containing updated energy and capacity values that comply with the methodology laid out by this Commission in past orders. In the alternative, should the Commission deem SCE&G's waiver request to be reasonable, then at the very least the utility must file its six month update on February 23, 2018, the date by which it is required to file its testimony in the 2018 fuel cost docket. This filing should be based on the prior approved methodology, without any unapproved and unilateral changes made by the Company. The filing should be treated the same as the six month update, and should go into effect *as soon as possible* and prior to the resolution of the 2018 proceeding, so that ratepayers have the immediate benefit of updated rates based on an approved methodology.

Any future changes to the methodology that SCE&G proposes should be brought forward in the 2018 docket, where there will be an opportunity to change the methodology prospectively. There is no reason to allow SCE&G to use the extended timeline of that proceeding to delay the issuance of updated rates.

Respectfully submitted this 16th day of January, 2018.

s/ J. Blanding Holman, IV

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CERTIFICATE OF SERVICE

I hereby certify that the parties listed below have been served via first class U.S. Mail or electronic mail with a copy of the Petition to Intervene of the South Carolina Coastal Conservation League and Southern Alliance for Clean Energy.

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This 16th day of January, 2018.

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